

SECOND PROTOCOL TO THE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND THE KING-
DOM OF THE NETHERLANDS ON SOCIAL SECURITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE NETHERLANDS ON SOCIAL SECURITY, PURSUANT TO
42 U.S.C. 433(e)(1)



JUNE 26, 2002.—Message and accompanying papers referred to the
Committee on Ways and Means and ordered to be printed

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WASHINGTON : 2002

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (Public Law 95–216, 42 U.S.C. 433(e)(1)), I transmit herewith the Second Protocol to the Agreement Between the United States of America and the Netherlands on Social Security (the “Second Protocol”). The Second Protocol was signed at The Hague on August 30, 2001, and is intended to modify certain provisions of the original U.S.-Netherlands Agreement, signed December 9, 1987, as amended by the Protocol of December 7, 1989 (the “U.S.-Netherlands Agreement”).

The U.S.-Netherlands Agreement as amended by the Second Protocol is similar in objective to the social security agreements that are also in force with Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Korea, Luxembourg, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation and to help prevent the loss of benefits that can occur when workers divide their careers between two countries. The U.S.-Netherlands Agreement as amended by the Second Protocol contains all provisions mandated by section 233 and other provisions that I deem appropriate to carry out the purposes of section 233, pursuant to section 233(c)(4).

I also transmit for the information of the Congress a report prepared by the Social Security Administration explaining the key points of the Second Protocol with a paragraph-by-paragraph explanation of the provisions of the Second Protocol (Annex A). Also annexed to this report is the report required by section 233(e)(1) of the Social Security Act, a report on the effect of the Second Protocol on income and expenditures of the U.S. Social Security program and the number of individuals affected by the Second Protocol (Annex B), and a composite text of the U.S.-Netherlands Agreement showing the changes that will be made as a result of the Second Protocol. The Department of State and the Social Security Administration have recommended the Second Protocol and related documents to me.

I commend the Second Protocol to the United States-Netherlands Social Security Agreement and related documents.

GEORGE W. BUSH.

THE WHITE HOUSE, *June 25, 2002.*

**SECOND PROTOCOL TO THE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE KINGDOM OF THE NETHERLANDS
ON SOCIAL SECURITY**

The Government of the United States of America

and

the Government of the Kingdom of the Netherlands,

Having considered the Agreement between the United States of America and the Kingdom of the Netherlands on Social Security, signed December 8, 1987, and the Protocol thereto, signed December 7, 1989 (hereinafter together referred to as the "Agreement"), and

Having recognized the need to clarify certain provisions of the Agreement,

Have agreed as follows:

Article I

Article 1, paragraph 8 of the Agreement shall be replaced by the following:

"8. "Benefit" means any cash benefit, pension or allowance for which provision is made in the laws of a Contracting State and includes any supplements or increases applicable to such a cash benefit, pension or allowance by virtue of the laws specified in Article 2;"

Article II

Article 5 of the Agreement shall be revised as follows:

- a. The existing text of Article 5 of the Agreement shall be designated as paragraph 1.
- b. The following paragraph 2 shall be added after paragraph 1:

"2. As regards the Netherlands:

Benefits under the Netherlands Children's Allowances Act shall be paid even if the covered person or the child resides or is present in the territory of the United States."

Article III

1. In applying Article 16 of the Agreement, the second sentence of paragraph 4 shall not apply to self-employed persons who become disabled after December 31, 1997. Instead, persons who were self-employed at the time when incapacity followed by invalidity occurred shall have their benefits determined in accordance with the Self-employed Persons Disablement Act of April 24, 1997 (WAZ).

This Protocol shall enter into force on the date on which both Parties shall have notified each other through diplomatic channels that the legal requirements for its entry into force have been fulfilled. Upon entry into force, Article II shall have effect retroactively from January 1, 2000. The Government of the Netherlands shall apply this Protocol provisionally from the first day of the second month following the date on which the Protocol is signed.

Done in duplicate at The Hague on 30 August 2007.

May, 1904

SECOND PROTOCOL TO THE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE KINGDOM OF THE NETHERLANDS
ON SOCIAL SECURITY

The Government of the United States of America and

The Government of the Kingdom of the Netherlands,

Having considered the Agreement between the United States of America and the Kingdom of the Netherlands on Social Security, signed December 8, 1987, and the Protocol thereto, signed December 7, 1989 (hereinafter together referred to as the "Agreement"), and

Having recognized the need to clarify certain provisions of the Agreement,

Have agreed as follows:

The original U.S.-Netherlands Social Security agreement was signed on December 8, 1987, and entered into force on November 1, 1990. A protocol to clarify several provisions of the Agreement was signed on December 7, 1989 and entered into force at the same time as the original agreement. This second protocol updates and clarifies the intent of several provisions of the agreement dealing with Netherlands Social Security benefits. It has no effect on agreement provisions affecting U.S. benefits or coverage.

PROTOCOL

-2-

Article I

Article 1, paragraph 8 of the Agreement shall be replaced by the following:

"8. "Benefit" means any cash benefit, pension or allowance for which provision is made in the laws of a Contracting State and includes any supplements or increases applicable to such a cash benefit, pension or allowance by virtue of the laws specified in Article 2,"

Article II

Article 5 of the Agreement shall be revised as follows:

(a) The existing text of Article 5 of the Agreement shall be designated as paragraph 1.

(b) The following paragraph 2 shall be added after paragraph 1:

"2. As regards the Netherlands:

Benefits under the Netherlands Children's Allowances Act shall be paid even if the covered person or the child resides or is present in the territory of the United States."

ANNOTATIONS AND COMMENTS

This provision was included at the request of the Netherlands authorities. It makes clear that the benefits to which the agreement applies include only benefits provided for in the laws listed in Article 2. Although this is the manner in which the Agreement has been applied since its entry into force in 1990, the Netherlands authorities wish to make completely clear that the Agreement does not apply to social assistance payments, such as those provided under the Netherlands Social Security Supplementary Benefits Act (TW).

Article 5 of the original agreement provides that where the laws of either country require that a person be resident or present in that country in order to qualify for or receive social security old-age, survivors or disability benefits, the person may also qualify for and receive those benefits during periods of residence in the other country. However, Article 5 of the agreement does not specifically refer to the Dutch child's allowance. Recent changes in Netherlands law restrict the payment of the child's allowance for people who become eligible after 1999 if the person or the person's child is outside the Netherlands. Because Article 5 of the agreement does not mention the child's allowance, the Netherlands authorities report that some people in the United States who applied for this allowance after 1999 have had their applications denied. Article II of the new protocol incorporates the necessary reference to the child's allowance in Article 5, thereby authorizing payment of the benefit in cases where the parent or the child is present or resident in the United States. The Netherlands authorities have agreed to apply this provision, in accordance with Article IV, retroactively to January 1, 2000, and to begin applying it provisionally with the second month following the signing of the protocol.

PROTOCOL

Article III

1. In applying Article 16 of the Agreement, the second sentence of paragraph 4 shall not apply to self-employed persons who become disabled after December 31, 1997. Instead, persons who were self-employed at the time when incapacity followed by invalidity occurred shall have their benefits determined in accordance with the Self-employed Persons Disablement Act of April 24, 1997 (WAZ).

ANNOTATIONS AND COMMENTS

Article III of the new protocol updates the agreement to take into account recent amendments to the Netherlands Social Security law applicable to self-employed persons. Prior to 1998, self-employed persons in the Netherlands were generally covered under a law known as the General Disablement Benefits Act of December 11, 1975 (Dutch acronym: AAW). This law provided long-term disability protection for all residents of the Netherlands. An additional law, known as the Disablement Insurance Act of February 18, 1966 (WAO) provided (and continues to provide) supplementary earnings-related protection for employed workers. The AAW was repealed effective January 1, 1998, and the self-employed have since been covered by a new law known as the Self-employed Persons Disablement Act of April 24, 1997 (WAZ).

Article 16.4 of the original agreement stipulates that when a person is employed at the time of disability onset and the person qualifies for a Netherlands disability benefit based on the agreement, the person will receive a prorated share of the benefit amount computed under the WAO, whereas a person who was not working or who was self-employed at the time of disability onset will receive a prorated share of the benefit amount computed under the AAW. Article III of the new protocol clarifies that a person who becomes disabled after 1997 and who is self-employed at the time of disability onset will have his or her benefits determined according to the new WAZ law.

2. The periods of coverage to be taken into account by the Netherlands in accordance with Article 16, paragraph 5 of the Agreement shall include periods of coverage completed under the WAZ, to the extent that these periods do not coincide with periods of coverage completed under the Disablement Insurance Act of February 18, 1966 (WAO).

The original agreement provides that the Netherlands disability benefit paid to a person who qualifies based on the agreement will be proportional to the duration of the person's work-related coverage under Dutch laws. Article III of the new protocol provides that periods of self-employment covered under the new WAZ law can also be used for this purpose, except for periods that are already credited based on employment covered under the WAO.

PROTOCOL

Article IV

This Protocol shall enter into force on the date on which both Parties shall have notified each other through diplomatic channels that the legal requirements for its entry into force have been fulfilled. Upon entry into force, Article II shall have effect retroactively from January 1, 2000. The Government of the Netherlands shall apply this Protocol provisionally from the first day of the second month following the date on which the Protocol is signed.

ANNOTATIONS AND COMMENTS

Each country will follow its own procedures for approval of the protocol. It will become effective on the day each Government has received formal notification of approval from the other Government. However, the provisions will be applied retroactively to January 1, 2000--the effective date of recent Dutch legislation restricting the payment of benefits outside the Netherlands. This provision allows for the retroactive payment of the Dutch child's allowance to beneficiaries in the United States beginning with January 1, 2000. The Netherlands authorities have also agreed to begin applying the protocol provisionally from the first day of the second month following the signing of the protocol, so that people in the United States whose Dutch child's allowances have been denied may receive them as soon as possible.

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Done in duplicate at The Hague on 30 August 2001.

For the Government
of the United States of America:

Mark A. Tokola

For the Government
of the Kingdom of the Netherlands:

J. F. Hoogervorst

The protocol was signed on August 30, 2001, at The Hague by the Chargé d'Affaires of the United States Embassy, Mark A. Tokola, and the Netherlands State Secretary of Social Affairs and Employment, J. F. Hoogervorst.

ANNEX B

REPORT TO CONGRESS ON THE FINANCIAL EFFECT
OF THE SECOND PROTOCOL TO THE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY

The protocol's primary purpose is to amend the existing U. S.-Netherlands Totalization agreement in order to allow payment of Dutch child's allowance benefits to all eligible individuals residing in the United States. These child allowance benefits are paid, in general, to families with children under 18, and the benefit amount varies depending on the number of children and their ages. Recent amendments to Dutch law prohibited payment of such child allowance benefits to United States residents who first became eligible for such benefits after 1999. The protocol would remove this payment restriction based on U. S. residence, and would further permit any retroactive payments for all affected individuals dating back to January 1, 2000.

The other provisions of the protocol are relatively minor and codify current practice, so they would not affect the level of Dutch benefit payments under the existing Totalization agreement.

It is estimated that, for fiscal years 2002 through 2006, the protocol would affect fewer than 500 beneficiaries per year and would result in an increase in benefit payments from the Dutch Social Security system of less than \$500,000 per year. The protocol would have no effect on benefit payments from the U. S. Social Security system.

Social Security Administration
Office of the Chief Actuary
January 8, 2002

ANNEX C

AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND
THE KINGDOM OF THE NETHERLANDS
ON SOCIAL SECURITY

Agreement signed at The Hague, December 8, 1987; as amended by a protocol signed at The Hague on December 7, 1989, both entered into force November 1, 1990.

Administrative arrangement signed at The Hague December 8, 1987, entered into force November 1, 1990.

Second Protocol signed at The Hague August 30, 2001.

The following is a composite version of the U.S.-Netherlands Social Security agreement marked to show revisions made by the second protocol to the agreement signed August 30, 2001. Text in underlined bold italics has been added by the second protocol; text in brackets with strikeout markings has been deleted.

AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND
THE KINGDOM OF THE NETHERLANDS
ON SOCIAL SECURITY

The Government of the United States of America and
The Government of the Kingdom of the Netherlands,

Being desirous of regulating the relationship between the two
States in the field of Social Security, have agreed as follows:

PART I
General Provisions

Article 1

For the purposes of this Agreement:

1. "United States" means the United States of America and
"Netherlands" means the Kingdom of the Netherlands;
2. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and
as regards the Netherlands, the territory of the Kingdom in Europe;
3. "National" means,
as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and
as regards the Netherlands, a person of Netherlands nationality;
4. "Laws" means the laws and regulations specified in Article 2;
5. "Competent Authority" means,
as regards the United States, the Secretary of Health and Human Services, and
as regards the Netherlands, the Minister for Social Affairs and Employment;
6. "Agency" means,
as regards the United States, the Social Security Administration, and
as regards the Netherlands, any institution or authority charged with implementing all or part of the laws specified in Article 2, paragraph 1(b), as well as Netherlands tribunals that are competent for cases under those laws;

7. "Period of coverage" means a period of payment of contributions, a period of earnings from employment or self-employment or a period of residence, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
8. ~~["Benefit" means any benefit or pension provided for in the laws of either Contracting State, including any increase of, or any additional amount payable with, a benefit or pension,]~~
"Benefit" means any cash benefit, pension or allowance for which provision is made in the laws of a Contracting State and includes any supplements or increases applicable to such a cash benefit, pension or allowance by virtue of the laws specified in Article 2;
9. Any term not defined in this Article shall have the meaning assigned to it in the laws which are being applied.

Article 2

1. This Agreement shall apply:
 - (a) As regards the United States, to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:
 - (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and
 - (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;
 - (b) As regards the Netherlands, to the laws governing:
 - (i) invalidity insurance;
 - (ii) general old-age insurance;
 - (iii) general widow's and orphan's insurance;
 - (iv) sickness insurance (cash benefits and benefits in kind);

- (v) unemployment insurance;
 - (vi) children's allowances.
2. The application of this Agreement shall be extended to future legislation of a Contracting State which creates new categories of beneficiaries under the laws specified in paragraph 1 unless the Competent Authority of that Contracting State notifies the Competent Authority of the other Contracting State in writing within three months of the date of the official publication of the new legislation that no such extension of the Agreement is intended.
 3. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include any treaty or other international agreement or supranational legislation on social security which may be in force between either Contracting State and a third State, or laws or regulations promulgated for their specific implementation.
 4. This Agreement shall not apply to social or medical assistance schemes or to special schemes for civil servants or persons treated as such.

Article 3

Unless otherwise provided, this Agreement shall apply to all persons who are or have been subject to the laws of one or both Contracting States as well as to family members and survivors of such persons insofar as they derive their rights from these persons.

Article 4

1. Except as provided in paragraph 2, the following persons, while residing in the territory of a Contracting State, shall be equated with nationals of that State in the application of its laws:
 - (a) nationals of the other Contracting State;
 - (b) refugees as defined in Article 1 of the Convention relating to the Status of Refugees of July 28, 1951, and in paragraph 1 of Article 1 of the Protocol of January 31, 1967, to the said Convention;
 - (c) stateless persons as defined in Article 1 of the Convention relating to the Status of Stateless Persons of September 28, 1954;

- (d) family members and survivors, irrespective of their nationality, of the persons mentioned under subparagraphs (a), (b) and (c) with regard to rights which they derive from such persons.
- 2. Paragraph 1 shall not apply with regard to United States laws on compulsory coverage.

Article 5

- 1. Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts payment of invalidity, old-age or survivors cash benefits solely because a person resides outside or is absent from the territory of that Contracting State shall not be applicable to persons who reside in the territory of the other Contracting State.

2. As regards the Netherlands:

Benefits under the Netherlands Children's Allowances Act shall be paid even if the covered person or the child resides or is present in the territory of the United States.

PART II

Provisions Concerning Applicable Laws

Article 6

Unless otherwise provided in this Part, a person employed within the territory of a Contracting State shall, with respect to that employment, be subject to the laws of only that Contracting State, even if the person concerned resides in the territory of the other Contracting State, or if his employer or the offices of the employer are located in the territory of the other Contracting State.

Article 7

A self-employed person who resides within the territory of a Contracting State shall be subject to the laws of only that State.

Article 8

Unless otherwise provided in Article 9, if a person resides in the territory of the Netherlands and is engaged in employment or self-employment in that territory, the person shall be subject only to Netherlands laws with respect to any employment or self-employment performed in the territory of either Contracting State.

Article 9

1. Where a person in the service of an employer having a place of business in the territory of a Contracting State is sent from that territory by that employer to work in the territory of the other Contracting State for a period not expected to exceed 5 years, the person shall remain subject to the laws of only the first Contracting State as if he were employed in the territory of the first Contracting State.
2. Paragraph 1 shall not apply in the case of a person who is sent by an employer from the territory of the United States to the territory of the Netherlands if the person is also employed in the territory of the Netherlands by a different employer located in that territory.
3. If, under paragraph 1, a person continues to be subject to the laws of a Contracting State from whose territory he has been sent to the territory of the other Contracting State, that paragraph shall also apply by analogy to the person's family members who accompany him, unless they are themselves employed or self-employed in the territory of the latter Contracting State.

Article 10

1. (a) If a person is employed as an officer or member of the crew on an American vessel and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the United States.

(b) If a person is employed as an officer or member of the crew on a non-American vessel and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Netherlands.
2. If a person is employed as an officer or member of the crew on an aircraft and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State in whose territory the employer is headquartered.

Article 11

Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of this Part concerning self-employment if the person is a resident of the first Contracting State and according to the provisions of this Part concerning employment in any other case.

Article 12

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.
2. Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first Contracting State. For the purposes of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.
3. The provisions of paragraph 2 shall apply by analogy to the family members accompanying the persons referred to in that paragraph who are sent by the Government of a Contracting State to the territory of the other Contracting State, unless these family members themselves are employed or self-employed in the territory of the other Contracting State.

Article 13

For the purposes of Netherlands laws, a person who is subject to Netherlands laws in accordance with this Part shall be considered to be resident in the territory of the Netherlands, and a person who is subject to United States laws in accordance with this Part shall be considered not to be resident in that territory.

Article 14

The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of this Part in the interest of any person or category of persons, provided that the affected person shall be subject to the laws of one of the Contracting States.

PART III

Provisions on Benefits

Chapter A

Provisions Applicable to the United States

Article 15

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under the laws of the Netherlands and which do not coincide with periods of coverage already credited under United States laws.
2. In applying paragraph 1, the agency of the United States shall not take into account periods of coverage which are credited under Netherlands laws solely on the basis of periods of residence in the territory of the Netherlands.
3. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every three months of coverage certified by the agency of the Netherlands; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.
4. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

5. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1.

Chapter B

Provisions Applicable to the Netherlands

Article 16

Invalidity Benefit

1. If a national of one of the Contracting States or a person designated in Article 4, paragraph 1(b) or (c), was subject to United States laws at the time when incapacity for work followed by invalidity occurred and had previously completed a total of at least 12 months of coverage under the Netherlands laws on invalidity insurance, he shall be entitled to a benefit determined in accordance with those Netherlands laws and calculated according to the rules of paragraphs 3 to 7.
2. For purposes of paragraph 1, a person shall be considered to be subject to United States laws if the person is insured for a benefit under such laws or has credit for at least 4 quarters of coverage under such laws during a period of 8 calendar quarters ending with the calendar quarter in which the incapacity for work followed by invalidity occurred as determined in accordance with Netherlands laws.
3. The amount of the benefit referred to in paragraph 1 shall be calculated in proportion to the ratio of the total length of the periods of coverage completed by the person concerned under Netherlands laws after the age of 15 years to the length of the period between the date on which he reached the age of 15 years and the date of his incapacity for work followed by invalidity.
4. If, at the time when incapacity for work followed by invalidity occurred, the person concerned was an employed person or a person treated as such, the benefit due shall be determined according to the Disablement Insurance Act of February 18, 1966 (WAO). If not, the benefit due shall be determined according to the General Disablement Benefits Act of December 11, 1975 (AAW).
5. The following shall be considered as periods of coverage completed under Netherlands laws:

- (a) periods of coverage completed during employment under the Disablement Insurance Act of February 18, 1966 (WAO);
 - (b) periods of coverage completed during self-employment under the General Disablement Benefits Act of December 11, 1975 (AAW);
 - (c) periods of employment and periods treated as such completed in the Netherlands before July 1, 1967.
6. In cases referred to in the first sentence of paragraph 4, when a period of coverage under the WAO coincides with a period of coverage under the AAW, only the period completed under the WAO shall be taken into account.
 7. In cases referred to in the second sentence of paragraph 4, when a period of coverage under the AAW coincides with a period of coverage under the WAO, only the period completed under the AAW shall be taken into account.

Article 17

Old-age Pension

1. The Netherlands agency shall determine the amount of the pension directly and exclusively on the basis of the periods of coverage completed under the Netherlands law mentioned in Article 2, paragraph 1(b)(ii).
2. Subject to paragraph 3, periods before January 1, 1957, during which a national of one of the Contracting States or a person described in Article 4, paragraph 1(b) and (c) resided in the territory of the Netherlands after reaching the age of 15 years or during which, while residing in another country, the person was gainfully employed in the territory of the Netherlands shall also be considered as periods of coverage if the person does not satisfy the conditions of the Netherlands law permitting such periods to be treated for that person as periods of coverage.
3. The periods referred to in paragraph 2 shall be taken into consideration for calculation of the old-age pension only if the person concerned has been insured within the meaning of Article 6 of the Netherlands law mentioned in Article 2, paragraph 1(b)(ii), and has resided for at least 6 years in the territory of one or both Contracting States after reaching the age of 59 years and only while the person is residing in the territory of either Contracting State.

However, these periods shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old-age pension under the legislation of a country other than the Netherlands.

Article 18

Survivors Pension

1. If a national of one of the Contracting States or a person designated in Article 4, paragraph 1(b) or (c), was subject to United States laws at the time of his death and had previously completed a total of at least 12 months of coverage under the Netherlands law on widows and orphans insurance, his widow or orphans shall be entitled to a benefit determined in accordance with Netherlands law and calculated in accordance with the rules of paragraph 3.
2. For purposes of paragraph 1, a person shall be considered to be subject to United States laws if the person is insured for a benefit under such laws or has credit for at least 4 quarters of coverage under such laws during a period of 8 calendar quarters ending with the calendar quarter in which the person died.
3. The amount of the benefit referred to in paragraph 1 shall be calculated in proportion to the ratio of the total length of the periods of coverage completed by the deceased under Netherlands law before he reached the age of 65 years to the length of the period between the date on which he reached the age of 15 years and the date of his death, but at the latest the date on which he reached the age of 65 years.

PART IV

Miscellaneous Provisions

Article 19

The Competent Authorities of the two Contracting States shall:

- (a) Make all necessary administrative arrangements for the application of this Agreement;
- (b) Designate liaison bodies in their respective territories to facilitate the application of this Agreement;

- (c) Communicate to each other information concerning the measures taken for the application of this Agreement; and
- (d) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 20

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement.

Article 21

Any application, appeal or other document which according to the laws of a Contracting State must be submitted within a specified period to the Competent Authority or an agency of that Contracting State, but which is instead submitted within the same period to the Competent Authority or an agency of the other Contracting State shall be considered to have been submitted on time. In such case, the Competent Authority or agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison body of the other Contracting State.

Article 22

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.
2. If an applicant has filed a written application for benefits with the agency of one Contracting State and has not specifically restricted the application to benefits under the laws of that State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

Article 23

Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or an agency of the other Contracting State in the application of this Agreement.

Article 24

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the English or Dutch language.
2. The Competent Authority and agencies of a Contracting State may not reject applications or other documents solely on the grounds that they are written in a foreign language, provided they are in the English or Dutch language.

Article 25

1. Payments under this Agreement may be validly made in the currency of the Contracting State making the payment.
2. Money transfers effected under this Agreement shall be made in accordance with any relevant agreements in force between both Contracting States at the time of transfer.
3. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Contracting State, the Governments of both Contracting States shall immediately decide on the measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

Article 26

1. Disputes between the two Contracting States regarding the interpretation or application of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If such a dispute cannot be settled within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral tribunal whose composition and procedure shall be agreed upon by the Contracting States. The decision of the arbitral tribunal shall be final and binding upon the Contracting States.

Article 27

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

PART V

Transitional and Final Provisions

Article 28

1. This Agreement shall also apply to events relevant to rights under the laws of either Contracting State which occurred prior to its entry into force. However, no benefits shall be payable under this Agreement for any period prior to its entry into force, nor shall a lump-sum death benefit be payable if the person died before its entry into force. Nevertheless, periods of coverage completed before the entry into force of this Agreement shall be taken into account in determining benefit rights, except that neither State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.
2. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.
3. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force.
4. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

5. The period of work referred to in Article 9, paragraph 1, shall be measured no earlier than the date on which this Agreement enters into force.

Article 29

Both Contracting States shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the date of the last notification.

Article 30

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.
2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

In witness whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

Done at The Hague on 8 December 1987 in duplicate in the English and Dutch languages, both texts being equally authentic.

For the Government of the
United States of America:

John Shad

For the Government of the
Kingdom of the Netherlands:

Hans van den Broek

ADMINISTRATIVE ARRANGEMENT
FOR THE IMPLEMENTATION OF THE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND
THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY

Pursuant to Article 19(a) of the Agreement between the United States of America and the Kingdom of the Netherlands on Social Security, concluded on 8 December 1987, the Competent Authorities:

for the United States of America,
the Secretary of Health and Human Services

for the Netherlands,
the Minister for Social Affairs and Employment

have agreed on the following provisions:

CHAPTER I
General Provisions

Article 1

1. For the application of this Administrative Arrangement, "Agreement" means the Agreement between the United States of America and the Kingdom of the Netherlands on Social Security.
2. Other terms shall have the meaning given to them in the Agreement.

Article 2

1. The following are designated as liaison bodies, pursuant to Article 19(b) of the Agreement:

For the United States:
the Social Security Administration;

For the Netherlands:

- a. as regards old-age, widows and orphans insurance:

Sociale Verzekeringsbank (Social Insurance Bank);

- b. as regards invalidity insurance:

Gemeenschappelijk Administratiekantoor (Joint Administration Office).

2. The liaison bodies of the Contracting States shall agree on joint forms and procedures necessary to implement the Agreement.
3. For the application of the Agreement, the liaison bodies may communicate directly with each other as well as with any person wherever the person may reside.

Article 3

The Netherlands agency competent for the application of Article 16 of the Agreement shall be the Nieuwe Algemene Bedrijfsvereniging (New General Professional Association).

CHAPTER II

Provisions Concerning Applicable Laws

Article 4

1. For the purposes of this Article, "institution" means, as regards the United States, the Social Security Administration, and, as regards the Netherlands, the Sociale Verzekeringsraad (Social Insurance Council).
2. When the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the institution of that Contracting State, upon request of an employed person,

the employer of that person or a self-employed person, shall issue a certificate stating that the employed person or self-employed person is subject to those laws. This certificate shall be proof that the named person is exempt from the laws on compulsory coverage of the other Contracting State.

3. When an employed person described in Article 9, paragraph 2, of the Agreement, to whom a certificate has been issued under paragraph 2 by the institution of the United States, subsequently becomes employed in the territory of the Netherlands by a different employer located in that territory, the employed person must, without delay, inform the institution of the United States. This institution shall thereupon issue an amended certificate and inform the institution of the Netherlands.
4. When Article 9, paragraph 3, or Article 12, paragraph 3, of the Agreement applies to a family member of an employed person sent from the territory of the Netherlands to the territory of the United States and that family member subsequently becomes employed or self-employed in the territory of the United States, this family member must without delay inform the institution of the Netherlands.
5. The institution of the Contracting State which has issued a certificate under this Article shall send copies of it to the employed person and the employer of that person or the self-employed person and, as needed, the institution of the other Contracting State.

CHAPTER III

Provisions on Benefits

Article 5

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 22 of the Agreement shall inform the appropriate agency of the other Contracting State of this fact without delay, either directly or by way of the liaison body, and provide such evidence and other documentation available to it as may be necessary for the agency of the other Contracting State to complete action on the claim.

2. The agency of a Contracting State which receives an application that was first filed with an agency of the other Contracting State shall without delay provide the latter agency, either directly or by way of the liaison body of the other Contracting State, with such evidence and other available information as may be required to complete action on the claim.
3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agency.

CHAPTER IV

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon by the liaison bodies of the Contracting States pursuant to Article 2 of this Administrative Arrangement, the agency of one Contracting State shall, upon request of the liaison body of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 7

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. When applying its laws, the agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 8

The institutions designated in Article 4 of this Administrative Arrangement shall exchange statistics on the number of certificates issued under the said Article and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 9

1. Where administrative assistance is requested under Article 20 of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed.
2. Upon request, the agency of either Contracting State shall furnish without expense to the agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.
3. An agency of a Contracting State may require a claimant or beneficiary who is present in the territory of the other Contracting State to undergo a medical examination in the territory of either Contracting State.
4. Amounts owed under paragraph 1 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 10

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement or this Administrative Arrangement shall be used exclusively for purposes of implementing the Agreement. Such information received by an agency, a liaison body or an institution of a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

Done at The Hague on 8 December 1987 in duplicate in the English and Dutch languages, both texts being equally authentic.

For the Competent Authority
of the United States of America:

For the Competent Authority
of the Kingdom of the Netherlands:

John Shad

Louw de Graaf

REPORT TO CONGRESS TO ACCOMPANY THE SECOND PROTOCOL
TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY

INTRODUCTION

The second protocol to the agreement on Social Security between the United States and the Netherlands is intended to modify certain provisions of the original U.S.-Netherlands Social Security agreement that was signed on December 9, 1987, and which entered into force on November 1, 1990. A prior protocol clarifying certain provisions of the original agreement was signed on December 7, 1989, and entered into force at the same time as the original agreement. This second protocol, like the original agreement and first protocol, was negotiated under authority of section 233 of the Social Security Act.

U.S.-Netherlands Social Security Agreement

The Social Security agreement between the United States and the Netherlands is one of 19 bilateral agreements the United States has concluded with foreign countries to provide limited coordination of the U.S. old-age, survivors, and disability insurance (OASDI) program with the comparable programs of the other countries. Like other U.S. agreements, the agreement with the Netherlands has two main purposes. First, it eliminates dual Social Security coverage and taxation, the situation that occurs when a worker from one country works in the other country and is required to pay Social Security taxes to both countries on the same earnings. The agreement includes rules that assign a worker's Social Security coverage and tax liability to just one country.

Second, the agreement helps prevent gaps in Social Security benefit protection for workers who divide their careers between the two countries. Under the agreement, workers and their family members can qualify for partial U.S. or Dutch benefits based on "totalized" (i.e., combined) work credits from both countries.

Second Protocol

The second protocol, which was signed by representatives of the U.S. and Netherlands Governments on August 30, 2001, would update and clarify several provisions of the original 1990 agreement that deal with Dutch Social Security benefits. The protocol has no effect on U.S. law or on the provisions of the agreement affecting U.S. law.

The protocol is now being transmitted to Congress for review in accordance with section 233(e) of the Social Security Act. Accompanying this report is a paragraph-by-paragraph explanation of the protocol (Annex A) and the estimate required by section 233(e)(1) on the effect of the protocol on the income and expenditures of the U.S. Social Security program and the number of individuals affected by the protocol (Annex B). Also included is a composite version of the original agreement marked to show the changes that will be made as a result of the protocol (Annex C).

MAIN PROVISIONS OF THE SECOND PROTOCOL

- The Dutch Children's Allowance

The primary purpose of the new protocol is to permit payment of Dutch child's allowance benefits to people in the United States. Although these benefits were previously exportable to the United States, recent amendments to Dutch law prohibit payment to people who first become eligible after 1999 unless they are present in the Netherlands.

Article II of the protocol provides an exception to this payment restriction so that the Dutch child's allowance can again be paid when either the parent or the child is present or resident in the United States. Article IV of the protocol gives this provision retroactive effect, and will, therefore, permit persons who were denied a child's allowance after 1999 because they were in the United States to claim benefits back to January 1, 2000.

- Other Provisions

The protocol also includes two minor amendments proposed by the Netherlands to conform the agreement to current Dutch law and practice. The first, in Article I, makes clear that Dutch social assistance payments are not included within the scope of the agreement. This clarifying amendment is consistent with the way in which the agreement has been applied since its entry into force in 1990.

The second amendment, in Article III, updates the agreement to take account of recent changes in Dutch law applicable to self-employed persons.